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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,730	07/20/2005	Markus Wolfram	3827.138	8396
41288	7590	04/02/2009		
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EXAMINER				
HOOK, JAMES F				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
04/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/542,730

Applicant(s)

WOLFRAM ET AL.

Examiner

James F. Hook

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
4a) Of the above claim(s) 3-6, 13, 16, 17, 20, 21 and 29-39 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 2, 7-12, 14, 15, 18, 19 and 22-28 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/14/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restrictions

Applicant's election without traverse of group I and figure 1 in the reply filed on March 3, 2009 is acknowledged.

Claims 3-6, 13, 16, 17, 20, 21, and 29-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 3, 2009. It is noted that claims 5 and 6 were stated as being elected however this structure appears in the non elected embodiment of figure 5, therefore these claims have also been considered as withdrawn from further consideration.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent

protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1 and 8 recite the broad recitation "a pipe for high viscous materials", and the claim also recites "in particular for concrete" which is the narrower statement of the range/limitation.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte*

Hasche, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 27 recites the broad recitation "metal", and the claim also recites "preferably steel" which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Oldham (FR 2197140).

Claims 8-12, 18, 19, and 23-27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Montaron (EP 266810).

Claims 8-12, 18, 19, and 24-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Klein (DE 1932448).

Claim 8 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Maclachlan.

Claim 8 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Peavy.

Claim 8 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schwarz (GB 1396119).

Claims 1, 2, 7-12, 18, 24-26, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by McLarty. The reference to McLarty discloses the recited transport

pipe where the use of such for concrete is merely intended use and the pipe of McLarty is capable of use with concrete, comprising an inner pipe of abrasion resistant plastic 1, at least one joint element 6,3 joined on an external end of the inner pipe, a radially extending collar and a concentric ring sleeve to the inner pipe, at least the internal pipe connected to the joint element, the radially projecting collar includes a ring step inwardly toward the inside of the pipe and recessed such that the ring shaped end face near 10 and 7 engages the inner pipe inside of the ring step, the end face is flush, an outer sleeve reinforcing jacket 2 of reinforce fiber impregnated plastic matrix, the joint element has an wavy face formed by member 3, epoxy binds it as an adhesion promoter, the fibers are glass, the matrix material is epoxy, the fibers are a mat form, the wave form of the joint element forms a tapered face at the free end as seen in the figure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 15, 19, 22, 23, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLarty. The reference to McLarty discloses all of the recited structure with the exception of what materials are used such as polyurethane (pu), providing pins or bolts to hold the parts together, and forming the waves of decreasing outer extent and providing more than one wave, however these are considered merely choices of mechanical expedients. It would have been obvious to one skilled in the art

to modify the inner liner and connector of McLarty by forming such of PU, providing pins or bolts to hold them together, and to provide more than one wave of decreasing dimension as such are merely choices of mechanical expedients and are old and well known in the art where only routine skill and experimentation are required to achieve optimum results.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Skinner, Rubenstein, Kuwabara, Berchem, Maine, and Egner disclosing state of the art liners.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James F. Hook/
Primary Examiner, Art Unit 3754

JFH